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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

McINTYRE — Atty. Ref.: 3598-2 (AMK); Confirmation No. 5634

Appl. No. 09/828,226 — TC/A.U. 3693

Filed: April 9, 2001 — Examiner: D. Felten

For: RANGE BID MODEL

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September 27, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief dated September 22, 2006, a revised Appeal Brief is submitted herewith. Appellant respectfully submits that the revised Appeal Brief more clearly satisfies the requirements of 37 C.F.R. §41.37.

The Notification contends that the Brief does not contain a statement to the status of all claims filed in the application. Without conceding this contention, the Appeal Brief has been revised to indicate that claims 1, 2, 9-14, 17 and 25 have been rejected and that claims 4-7, 15, 16, 18-21 and 26-30 have not been rejected (as set out in 37 C.F.R. §41.37(c)(1)(iii), these claims have neither been cancelled, allowed or confirmed, rejected, withdrawn, or objected to - as best as Appellant can describe, these claims are "not rejected").

With regard to the summary of claimed subject matter, 37 C.F.R. §41.37(c)(1)(v) and the MPEP do not require that the summary "map each independent claim to the specification by

page and line number." Rather, the summary is required to contain a "concise explanation of the subject matter defined in each of the independent claims involved in the appeal." Notwithstanding, the Appeal Brief has been revised to reference the specification by page and line number.

Appellant thus respectfully submits that the Appeal Brief satisfies the requirements of 37 C.F.R. §41.37. Entry of the Appeal Brief is respectfully requested.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

McINTYRE

Serial No. 09/828,226

Filed: April 9, 2001

For: RANGE BID MODEL

Atty. Ref.: 3598-2

TC/A.U.: 3624

Examiner: D. Felten

* *

September 27, 2006

Mail Stop Appeal Brief - Patents
Commissioner for Patents
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APPEAL BRIEF

Sir:

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

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(I) REAL PARTY IN INTEREST

The real party in interest is Kevin A. McIntyre.

(II) RELATED APPEALS AND INTERFERENCES

The Appellant and the undersigned are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

(III) STATUS OF CLAIMS

Claims 1, 2, 4-7, 9-21 and 25-30 are pending. Claims 1, 2, 9-14, 17 and 25 have been rejected. Claims 4-7, 15, 16, 18-21 and 26-30 have not been rejected.

(IV) STATUS OF AMENDMENTS

No amendments have been filed since the date of the last rejection.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a bidding model, joining buyers and sellers over a global network such as the Internet and, more particularly, to a range bidding model incorporating a market element for setting prices. The seller side process is described with reference to the flowchart of FIG. 2. Using a computer or like system, the potential seller accesses the global network and requests an appropriate protocol and URL. In step S2, the user selects a desired subject area, examples of which are shown in FIG. 2 at S2-1. As prompted by the server system, in step S3, the seller inserts a price range bid, e.g., a lower limit, expiration date, quantity, quality and other relevant parameters corresponding to the selling product or service. The central server system then looks for a range bid overlap with a potential buyer (step S4), and if an overlap is found (YES in step S5), the central controller or server system divides or splits the overlap region to arrive at a price point (step S6). Subsequently, a tracking number is added, and the transaction becomes binding (step S7). Funds received from the buyer's account are placed in the seller's account (step S8), and the transaction status is changed to "COMPLETED" (step S9). In step S10, a purchase confirmation is transmitted to the buyer, preferably by email or the like. See page 9, lines 11-25.

In the event that the central controller does not find an overlap between the seller's bid range and the buyer's bid range (NO in step S5), both a buyer and seller can be notified and requested to make adjustments to the respective bids. In this context, the system is preferably provided with provisions to prevent one party attempting to "game" the system by trying to discover the other's limit price. Alternatively, the seller and

buyer may elect to investigate the difference in bid prices and arrive at a mutually satisfactory conclusion. See page 9, line 26 – page 10, line 9.

A range of ranges can be selected to allow the model to run over time. The range of ranges allows a bidder and/or seller to automatically change a price range by a certain amount per unit of time. As a seller, for example, one party may instruct the model to reduce the minimum by a certain amount of each of several periods of time (e.g., $10.00 every 12 hours) until a match is made or until the product is no longer available. This "range of ranges" concept is allowed as a convenience to either party, recognizing that supply and demand market forces are constantly changing. For example, in an airline context, a traveler may become slightly more desperate to secure travel plans with time. See page 10, lines 10-18.

FIG. 3 is a flow chart showing the buyer-side process according to the present invention. In step S20, a potential buyer accesses the Internet via a particular protocol and URL using a computer or like system. The potential buyer may access the particular site via a "chat room" S20-1 or the like. In step S21, the potential buyer selects a desired subject area, examples of which are shown at S21-1. The buyer is then prompted to input a price range bid, expiration, quantity, quality, credit card information and any other pertinent parameters relating to the desired product or service (step S22), and the central controller looks for a range bid overlap with a potential seller (step S23). If an overlap is found (YES in step S24), according to the present invention, the central controller splits or divides the overlap region to arrive a price point (step S25). In step S26, a tracking number is added, and the transaction becomes binding. Funds are removed from the

buyer's account and placed in the seller's account (step S27), and the transaction status is changed to "COMPLETED" (step 28). In step S29, a purchase confirmation is transmitted to the seller via email or the like. See page 10, line 19 – page 11, line 3.

The process carried out by the server or central controller will be described with reference to the flow chart of FIG. 4. In step S40, the central controller extracts a price point from a determined overlap region of range bids. Preferably, the price point is selected at a point midway between overlapping bids. The server then requests a merchant approval code for the transaction from the indicated credit card clearinghouse (step S41). If the approval code is received, designating that credit is sufficient (YES in step S42), and the time restriction for either party has not expired (NO in step S43), the controller accepts and processes the transaction (step S44). See page 11, lines 13-20.

An example of the range bid model according to the invention is described with reference to FIGS. 5 and 6 at page 11, line 25 – page 12, line 3.

Referring to FIG. 6, if the buyer upper limit is, for example, $250.00, and the seller lower limit is, for example, $300.00, a $50.00 shortage region exists. As described above, in this instance, the buyer and seller may be asked to adjust their bids accordingly or terminate the transaction. Alternatively, if both the buyer and seller agree, the shortage region can be displayed to each party along with a proposed theoretical price point, midway between the buyer upper limit and the seller lower limit ($275.00 in the example of FIG. 6). See page 12, lines 10-16.

In an alternative operating mode, if both parties to the transaction are agreeable, each party may be limited to only one bid per item/application. Consequently, both

parties will be forced to be more realistic in making a bid, thereby increasing the likelihood of establishing an overlap region right away. See page 14, lines 3-12.

The range bid model may also include, as a proprietary asset, the database of information derived from running any application, for example, including the database of price points, theoretical price points from the shortage region, rates of change and step size of bids in the range of ranges. This information could be used to analyze buyer and seller behavior for the purpose of setting price points for similar goods and services sold outside of the model. It would also be very useful in establishing targeted advertising. See page 14, lines 13-18.

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 2, 9-14, 17 and 25 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al. in view of U.S. Patent No. 5,615,269 to Micali.

(VII) ARGUMENT

Claims 1, 2, 9-14, 17 and 25 are not unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al. in view of U.S. Patent No. 5,615,269 to Micali.

With reference to the Office Action, all of the independent claims except for claims 19 and 20 have been rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al. in view of U.S. Patent No. 5,615,269 to Micali. As is clear from the file history, this Office Action represents the seventh Action on the merits in the subject application. In this seventh Office Action, the cited Rickard and Micali patents are no closer to the subject matter of the claimed invention than any of the previously-cited references. Where appropriate, the Argument section from the Appeal Brief filed April 5, 2006 is hereby incorporated by reference.

The Rickard patent references satisfaction zones based on multiple transaction parameters, then attempts to find a discrete point where opposing party zones overlap. The system defines/assembles special and complex products and deals for those with special needs. The system then attempts to build markets and finally to define terms that are agreeable to all parties in a transaction. In contrast with the subject matter of the claimed invention, as discussed in more detail below, Rickard lacks any teaching or suggestion of what to do in the event the terms are not agreeable to all parties (i.e., there is no overlap), and Rickard additionally lacks any teaching or suggestion of bids or selling prices that vary with time.

In this seventh Office Action, the Examiner acknowledges that Rickard lacks a teaching of setting a theoretical price point between the lower limit price and the upper

limit bid when an overlap region does not exist. The Examiner contends, however, that Micali discloses this subject matter and that it would have been obvious to modify the Rickard system in view of Micali. To the contrary, however, Micali describes a transaction where a price point is between the seller reservation price and the buyer reservation price. Nowhere does the Micali patent contemplate a manner of processing a transaction when an overlap region does not exist. The references to "splitting the middle" in the Micali patent relate only to a scenario where there is an overlap region between the buyer and seller reservation prices.

Appellant does not disagree that one of the parameters for mutual satisfaction is price in any transaction. Claim 1 of the present application, however, embodies a scenario where no overlap region exists, and thus "mutual satisfaction" on the original parameters is entirely unreachable (i.e., the buyer upper limit bid, which is the buyer's maximum, does not exceed the seller's lower limit price, which is the seller's minimum).

Since at least this subject matter is lacking in Rickard and Micali, Appellant respectfully submits that the rejection of claim 1 is misplaced.

Independent claim 13 defines a step of receiving a lower limit price range from the seller that varies with time, and if an overlap region exists between the seller lower limit price range based on time and the buyer upper limit bid, a price point is set for the product within the overlap region that is based on the lower limit price and the upper limit bid. Claim 14 defines related subject matter from the buyer's perspective, defining steps of receiving a lower limit price for a product from the seller, and receiving an upper limit bid range from the buyer that varies with time. Claim 25 defines related features.

Although these independent claims are included in the general discussion of the Rickard and Micali patents, there is no reference to any teaching or suggestion in this general discussion of subject matter in either patent that even remotely meets these features of the invention. In fact, Appellant submits that Rickard and Micali lack any teaching or remote suggestion of such subject matter.

With regard to claim 17, step (b) of claim 17 defines the step of receiving an upper limit bid for the product from the buyer, wherein step (b) is practiced by allowing only one bid for the product from the buyer. Although claim 17 is included in the rejection and the general discussion of the Rickard and Micali patents, the Office Action does not reference a single teaching in the Rickard and Micali patents that meets this feature of the invention. In this context, the Rickard patent does not describe a typical transaction between a buyer and a seller. Rather, as discussed above, the Rickard method utilizes a satisfaction function among multiple parties and multiple transaction parameters. Since such a system is entirely diverse to that of the claimed invention, nowhere does the Rickard patent reference a scenario where a buyer is permitted only one bid for a product. Micali is silent with respect to any such teaching.

The dependent claims were not discussed in the Office Action. The dependent claims further define features and components of the theoretical price point, among other features of the invention, which are lacking in Rickard and Micali, taken singly or in combination.

Appellant acknowledges that claims 4-7, 15, 16, 18-21 and 26-30 have not been rejected over prior art.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the rejections and passage of the subject application to issue are earnestly solicited.

Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price for a product from the seller via the global network, the buyer being unaware of the seller's lower limit price;

(b) receiving an upper limit bid for the product from the buyer via the global network, the seller being unaware of the buyer's upper limit bid;

(c) the computer system comparing the seller lower limit price and the buyer upper limit bid;

(d) if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid; and

(e) if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the computer system further processing the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

2. A method according to claim 1, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, step (d) is practiced by setting the price point for the product at a midpoint of the overlap region.

4. A method according to claim 26, wherein step (e) is practiced by terminating the transaction.

5. A method according to claim 26, wherein step (e) is practiced by notifying the seller and the buyer that an overlap region does not exist and requesting the seller and the buyer to either (1) adjust the respective lower limit price and upper limit bid, or (2) terminate the transaction.

6. A method according to claim 5, further comprising, after step (e), either (1) receiving an adjusted lower limit price and an adjusted upper limit bid and repeating steps (c)-(e), or (2) receiving an instruction to terminate the transaction.

7. A method according to claim 5, further comprising, after step (e) receiving one of an adjusted lower limit price or an adjusted upper limit bid, and repeating steps (c)-(e).

9. A method according to claim 1, wherein step (e) is practiced by setting a theoretical price point at a midpoint between the lower limit price and the upper limit bid.

10. A method according to claim 1, further comprising providing the seller and the buyer with an opportunity to agree on the theoretical price point, completing the transaction only if both the seller and the buyer agree on the theoretical price point, and otherwise terminating the transaction.

11. A method according to claim 10, further comprising providing a component for preventing gaming of the system.

12. A method according to claim 1, wherein step (e) is further practiced by displaying a shortage region representing a difference between the lower limit price and the upper limit bid to the seller and the buyer.

13. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price range from the seller via the global network that varies with time, the buyer being unaware of the seller's lower limit price range;

(b) receiving an upper limit bid for the product from the buyer via the global network, the seller being unaware of the buyer's upper limit bid;

(c) the computer system comparing the seller lower limit price based on time and the buyer upper limit bid; and

(d) if an overlap region exists between the seller lower limit price based on time and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid.

14. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price for a product from the seller via the global network, the buyer being unaware of the seller's lower limit price;

(b) receiving an upper limit bid range from the buyer via the global network that varies with time, the seller being unaware of the buyer's upper limit bid range;

(c) the computer system comparing the seller lower limit price and the buyer upper limit bid based on time; and

(d) if an overlap region exists between the seller lower limit price and the buyer upper limit bid based on time, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid.

15. A method according to claim 1, wherein step (a) is practiced by additionally receiving an expiration relating to the product and by receiving a lower limit price range from the seller that varies with time to the expiration.

16. A method according to claim 1, wherein step (b) is practiced by additionally receiving an expiration relating to the upper limit bid and by receiving an upper limit bid range from the buyer that varies with time to the expiration.

17. A method of conducting a transaction between a buyer and a seller over a global network with a computer system, the method comprising:

(a) receiving a lower limit price for a product from the seller via the global network;

(b) receiving an upper limit bid for the product from the buyer via the global network, wherein step (b) is practiced by allowing only one bid for the product from the buyer;

(c) the computer system comparing the seller lower limit price and the buyer upper limit bid; and

(d) if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid.

18. A method according to claim 1, further comprising compiling a database of information relating to sellers, buyers, products and price points.

19. A computer system for conducting a transaction between a buyer and a seller, the computer system comprising:

at least one user computer running a computer program that effects input information relating to one of a lower limit price for a product from the seller or an upper limit bid for the product from the buyer, wherein the buyer is unaware of the seller's lower limit price and the seller is unaware of the buyer's upper limit bid; and

a system server running a server program, the at least one user computer and the system server being interconnected by a computer network, the system server receiving the input information and processing the input information with information from other user computers by comparing the seller lower limit price and the buyer upper limit bid, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the server setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid, and wherein if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the server further processing the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

20. A computer program embodied on a computer-readable medium for conducting a transaction between a buyer and a seller, the computer program comprising:

means for receiving a lower limit price for a product from the seller, the buyer being unaware of the seller's lower limit price;

means for receiving an upper limit bid for the product from the buyer, the seller being unaware of the buyer's upper limit bid; and

means for comparing the seller lower limit price and the buyer upper limit bid, wherein if an overlap region exists between the seller lower limit price and the buyer

upper limit bid, the comparing means comprises means for setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid, and wherein if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the comparing means comprises means for further processing the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid.

21. A computer program according to claim 20, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the setting means sets the price point for the product at a midpoint of the overlap region.

25. A method of conducting a transaction between a buyer and a seller over a global network with a computer system for exchange of a product of decaying value, the method comprising:

(a) receiving a lower limit price for the product from the seller via the global network, the buyer being unaware of the seller's lower limit price;

(b) receiving an upper limit bid for the product from the buyer via the global network, the seller being unaware of the buyer's upper limit bid;

(c) receiving an expiration relating to the product and receiving at least one of a lower limit price range from the seller via the global network or an upper limit bid range from the buyer via the global network that varies with time to the expiration;

(d) the computer system comparing the seller lower limit price and the buyer upper limit bid relative to time; and

(e) if an overlap region exists between the seller lower limit price and the buyer upper limit bid, the computer system setting a price point for the product within the overlap region that is based on the lower limit price and the upper limit bid and completing the transaction.

26. A method according to claim 17, further comprising (e) if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, further processing the transaction according to predefined parameters.

27. A method according to claim 13, further comprising compiling a database of information relating to sellers, buyers, products and price points.

28. A method according to claim 14, further comprising compiling a database of information relating to sellers, buyers, products and price points.

29. A method according to claim 17, further comprising compiling a database of information relating to sellers, buyers, products and price points.

30. A method according to claim 25, further comprising compiling a database of information relating to sellers, buyers, products and price points.

(IX) EVIDENCE APPENDIX

(NOT APPLICABLE)

(X) RELATED PROCEEDINGS APPENDIX

(NOT APPLICABLE)